



State of Rhode Island
RHODE ISLAND BOARD OF EDUCATION
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Enclosure 6c
April 6, 2021

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April 6, 2021

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation –
James Viner v. North Kingstown School Committee

The Appeals Committee of the Council on Elementary and
Secondary Education met on March 9, 2021, to hear oral argument
on the appeal of the following matter:

James Viner v. North Kingstown School Committee

**RECOMMENDATION: THAT, in the matter of James Viner v. North
Kingstown School Committee, the Commissioner's decision is
affirmed, as presented.**

STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

JAMES VINER

vs.

**NORTH KINGSTOWN SCHOOL
COMMITTEE**

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DECISION

This is an appeal by James Viner (“Appellant”) from the “Ruling on Motion to Reopen the Record” of the Commissioner of Education (“Commissioner”), dated February 19, 2020 (the “Decision”), whereby the Commissioner affirmed a previous decision of the Commissioner, dated May 9, 2017 (the “Initial Decision”), in which the Commissioner upheld the North Kingstown School Committee’s (“NKSC”) decision to suspend and terminate Appellant’s employment for good and just cause under the Teachers’ Tenure Act (the “Act”).

The unusual travel of this case was outlined in the Decision as follows. In the Initial Decision, the Commissioner accepted the Rhode Island Department of Education Hearing Officer’s (the “RIDE Hearing Office”) findings of fact related to the NKSC termination of Appellant, but reversed the RIDE Hearing Officer’s legal conclusion that the facts did not meet the good and just cause standard for a teacher termination under the Act. *Decision at 2*. During the pendency of an appeal of the Initial Decision to the Council on Elementary and Secondary Education (the “Council”), the Rhode Island Supreme Court issued a ruling on a discovery dispute between Appellant and NKSC and directed the parties back to the RIDE Hearing Officer upon resolution of the discovery dispute. *Id. at 2-3*.

In the Decision, the Commissioner reopened the record and accepted the evidence arising from the discovery dispute. *Id. at 6*. The Commissioner determined that the evidence was not material to any of the factual findings made in the Initial Decision, and affirmed the Initial Decision in all respects. *Id. at 7*.

The Appellant filed a timely appeal with the Council. Appellant asks the Council to reverse the Decision on the basis that the Commissioner erred by (1) not applying the appropriate de novo standard of review for a teacher termination; (2) disregarding the factual findings of the hearing officer; (3) failing to apply the appropriate standard for “good and just cause” for a teacher termination; and (4) ignoring the failure to give Appellant his due process rights. *Brief of Appellant at 5*. In its reply brief, the NKSC argues that the Commissioner acted appropriately in all manners, except for the finding that NKSC violated Appellant’s due process rights, which NKSC now asks the Council to overturn.

The Council reviewed the briefs and considered the arguments presented by the parties at oral argument on March 9, 2021. On appeal, the Council’s review is limited to a determination regarding whether the decision of the Commissioner is “patently arbitrary, discriminatory, or unfair.” Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

Appellant cites to the Initial Decision and argues that the Commissioner did not apply the de novo review standard while giving improper deference to the NKSC decision to suspend and terminate Appellant. *Brief of Appellant at 6*. However, the record is replete with evidence of the Commissioner’s fact finding efforts and application of the appropriate standard of review. Further, Appellant cites to specific language in the Initial Decision in which the Commissioner noted the discretion available to local school committees in teacher terminations. *Brief of Appellant at 7*. However, this single citation ignores that the Commissioner was applying the

heavily cited outline of the “good and just cause” standard in Section I of the Initial Decision. *Initial Decision at 2-4*. We find that the Commissioner applied the appropriate de novo standard of review and committed no error.

Next, Appellant argues that the Commissioner failed to give deference to the RIDE Hearing Officer’s findings of fact. However, in Appellant’s lengthy outline of the findings of fact, Appellant presents no instances of the Commissioner rejecting any of the RIDE Hearing Officer’s findings of fact. *Brief of Appellant at 9-36*. Instead, Appellant points to the application of those facts to the determination of whether such facts amounted to a violation of the Staff Policy on Sexual Harassment. *Id. at 33-36*. The Commissioner simply recited facts found by the RIDE Hearing Officer, cited the language of the Staff Policy on Sexual Harassment, and applied the facts to the legal standard. *Initial Decision at 6*. As Appellant does not point to the rejection of any finding of fact, we find no error.

Similar to the first alleged cause of error, Appellant points to the application of the legal standard for good and just cause under the Act as grounds for error to overturn the Decision. We disagree. As noted previously, the Commissioner’s outline of the good and just cause standard under the Act is well cited and consistent with the law. *Id. at 2-3 (citing McCrink v. City of Providence*, No. PC 10-4303, 2012 R.I. Super. LEXIS 152 (R.I. Super Ct. Sep. 28, 2012); *McKenney v. Barrington Sch. Comm.*, No. 2014-2223, 2016 R.I. Super. LEXIS 78 (R.I. Super. Ct. July 14, 2016; *Rogers v. Board Educ. Of City of New Haven*, 749 A.2d 1173 (Conn. 2000); *Pierre v. Smithfield Sch. Committee*, 2009 R.I. Super. LEXIS 121 (R.I. Super. September 9, 2009); *Sch. Comm. Of Lexington v. Zagaeski*, 469 Mass. 104 (Mass. 2014)). We find no error in the application of the legal standard for good and just cause under the Act.

Finally, Appellant alleges that the Commissioner ignored the NKSC's failure to give Appellant necessary due process protections. This claim is easily dismissed based on the plain language of the Initial Decision and the Decision. The Commissioner determined that Appellant's due process right were initially violated, but that any such violations were cured by the de novo hearing before the Commissioner. *see Initial Decision at 2 (citing RIDE Hearing Officer Decision and Order at 32-37) and Decision at 7*. The Commissioner accepted the RIDE Hearing Officer's conclusion that "providing a teacher with a *de novo* evidentiary hearing *after* he or she has been provided with adequate notice of the charges against him . . . is itself a sufficient remedy for a due process violation occurring before a teacher's employment has been effectively terminated." *citing Ciprian v. Providence School Bd.*, 2009 WL 4479251 (R.I. Superior Court, 2009). It is well settled that the more comprehensive a post-termination hearing, the less likely a due process violation has occurred. *See Chmielinski v. Commonwealth of Massachusetts*, 484 F. Supp.2d 201, 204 (D.Mass 2007)(*citing Cronin v. Town of Amesbury*, 81 F.3d at 257, 260. We find no error in the Commissioner's determination that the post-termination de novo hearing cured any pre-termination due process violations.¹

Having reviewed the Appellant's four (4) grounds for error on appeal, we find that none meet our standard of review to overturn the Decision. The Commissioner's decision that the NKSC suspension and termination of Appellant was supported by good and just cause is not "patently arbitrary, discriminatory, or unfair". *Id.*

For the reasons stated herein, the decision of the Commissioner is affirmed.

¹ While NKSC asks the Council to overturn the Decision and find that there was no initial due process violation, NKSC never appealed the Decision. Appeals from decisions of the Commissioner must be presented to the Council within thirty (30) days. 200-RICR-30-15-4.4(A)(1). As a result, that appeal cannot be considered. *Petrarca v. Personnel Appeal Board*, C.A. No. 98-2631 (R.I. Super. 1999)(Failing to present appeal to Personnel Appeal Board within thirty (30) days in accordance with requirement was untimely).

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on March 9, 2021.

Council on Elementary and Secondary Education

Barbara A. Cottam, Chair of the Board of Education

April 6, 2021

Amy Beretta, Appeals Committee Chair

April 6, 2021